

**United States Department of Labor
Employees' Compensation Appeals Board**

P.A., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
RACINE, WI, Employer**

)
)
)
)
)
)
)
)
)

**Docket No. 10-739
Issued: November 8, 2010**

Appearances:

Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 25, 2010 appellant, through his representative, filed a timely appeal from the December 23, 2009 merit decision of the Office of Workers' Compensation Programs, which granted a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the schedule award claim.

ISSUE

The issue is whether appellant has greater than 25 percent permanent impairment of the left lower extremity and greater than 37 percent permanent impairment of the right lower extremity.

FACTUAL HISTORY

Appellant, a 65-year-old clerk, slipped and fell on an icy parking lot in the performance of duty on January 7, 2004. The Office initially accepted her claim for left knee sprain, contusion and internal derangement. Appellant underwent a left knee arthroscopic procedure on March 9, 2004, which the Office authorized. The Office later expanded her claim to include

permanent aggravation of degenerative joint disease of the left knee, right knee strain and aggravation of degenerative arthritis of both knees. It also authorized left and right total knee replacements, which appellant underwent on November 14, 2005. Appellant underwent a second right knee replacement surgery on January 28, 2008, which the Office similarly authorized.

On June 2, 2008 appellant filed a claim for a schedule award. Dr. Subbanna Jayaprakash, a Board-certified physiatrist, provided a June 2, 2008 impairment rating for both lower extremities. Applying the 5th edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2001), Dr. Jayaprakash found 50 percent impairment of the left lower extremity based on a “fair” result following appellant’s November 14, 2005 left total knee arthroplasty.¹ As to the right lower extremity, he found 75 percent impairment based on a “poor” result following the initial right total knee arthroplasty and January 28, 2008 revision arthroplasty.

The district medical adviser (DMA) reviewed the record and determined that appellant had 37 percent impairment of the left lower extremity and 50 percent impairment of the right lower extremity. The DMA disagreed with Dr. Jayaprakash’s characterization of the results of appellant’s left and right total knee replacement surgeries. Whereas Dr. Jayaprakash found a “fair” result on the left side, the DMA found a “good” result. According to Table 17-33, A.M.A., *Guides* 547 (2001), this represented a decrease in the left lower extremity impairment from 50 to 37 percent. The DMA also disagreed with Dr. Jayaprakash’s rating with respect to appellant’s right lower extremity. Instead of a “poor” result and corresponding 75 percent impairment, the DMA found that the total right knee replacement and revision surgery on January 28, 2008 was more appropriately characterized as a “fair” result, which justified only a 50 percent impairment rating under Table 17-33.

The Office adopted the 6th edition of the A.M.A., *Guides* (2008) for all schedule award determinations effective May 1, 2009. Accordingly, it asked the DMA to calculate appellant’s impairment under the latest edition of the A.M.A., *Guides*.

In a May 25, 2009 report, the DMA found that under the 6th edition of the A.M.A., *Guides* appellant had 25 percent impairment of the left lower extremity for a “good” result following surgery. On the right side her impairment rating was 37 percent for a “fair” result following knee replacement surgery. However, the DMA did not identify which specific Table(s) he used in determining appellant’s lower extremity impairment under the 6th edition of the A.M.A., *Guides* (2008).

On July 8, 2009 the Office granted a schedule award for 25 percent impairment of the left lower extremity and 37 percent impairment of the right lower extremity. The award covered a period of 178.56 weeks beginning June 7, 2008. After noting the impairment rating was less than the treating physician’s calculation, the Office explained that the DMA determined that appellant’s physician “incorrectly applied the [A.M.A.] *Guides* to the findings on examination.” The Office indicated that the weight of the medical evidence was represented by the DMA who “correctly” applied the A.M.A., *Guides*.

¹ Dr. Jayaprakash referenced Tables 17-33 and 17-35, A.M.A., *Guides* 546-47, 549 (2001).

By decision dated December 23, 2009, the Branch of Hearings & Review affirmed the July 8, 2009 schedule award. The hearing representative noted that the DMA's May 25, 2009 report was the only one based on the 6th edition of the A.M.A., *Guides* (2008).

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.² The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.³ Effective May 1, 2009 schedule awards are determined in accordance with the 6th edition A.M.A., *Guides* (2008).⁴

ANALYSIS

The Board finds that the case is not in posture for decision due to an unresolved conflict in medical opinion.⁵ The DMA disagreed with Dr. Jayaprakash's June 2, 2008 impairment rating. The disagreement was over the proper characterization of the results of appellant's various knee replacement surgeries. Both the 5th and 6th edition of the A.M.A., *Guides* require rating knee replacement results as either poor, fair or good. The overall impairment rating is a function of the surgery result classification. Although no longer applicable, the 5th edition of the A.M.A., *Guides* rating process includes a point system under Table 17-35 based on such factors as pain, range of motion, stability, flexion contracture, extension lag and alignment.⁶ Less than 50 points results in a classification of "poor" and a corresponding lower extremity impairment of 75 percent. An accumulation of 50 to 84 points represents a "fair" result, with a lower extremity impairment rating of 50 percent, and 85 to 100 points represents a "good" result and a corresponding 37 percent impairment rating.

² For total loss of use of a leg, an employee shall receive 288 weeks' compensation. 5 U.S.C. § 8107(c)(2) (2006).

³ 20 C.F.R. § 10.404.

⁴ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Example 1 (January 2010).

⁵ The Act provides that if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician who shall make an examination. 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994). Where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight. *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

⁶ A.M.A., *Guides* 549 (2001).

Although the DMA and Dr. Jayaprakash both referenced Table 17-35 in their respective reports, neither physician delineated how any particular points were allocated.⁷ Thus, it is difficult to ascertain how Dr. Jayaprakash characterized the left and right knee results as “fair” and “poor,” respectively. It is similarly difficult to determine how the DMA characterized the replacement surgeries as “good” and “fair.” When the DMA was asked to rate appellant’s impairment under the 6th edition of the A.M.A., *Guides*, he continued with his earlier characterization of the knee replacement results as “good” (left) and “fair” (right), but this time the DMA did not reference the particular Table(s) of the A.M.A., *Guides* upon which he relied.⁸

Both the claims examiner and the hearing representative accorded determinative weight to the DMA’s May 25, 2009 report. Contrary to the Office’s finding, it is not evident that one physician correctly applied the A.M.A., *Guides* and the other physician did not. The DMA’s impairment rating appears no less subjective than Dr. Jayaprakash’s June 2, 2008 rating. While it is apparent they disagree, it is not apparent which of the two differing opinions represents the correct bilateral lower extremity impairment.⁹ Consequently, the Board finds that the evidence is in equipoise. Because of the unresolved conflict in medical opinion, the case will be remanded to the Office for referral to an impartial medical examiner. After such further development of the case record as the Office deems necessary, a decision shall be issued.

CONCLUSION

The case is not in posture for decision.

⁷ While instructive for purposes of analysis, the point system was not carried over to the 6th edition of the A.M.A., *Guides*.

⁸ Total knee replacements are addressed under Table 16-3, Knee Regional Grid -- Lower Extremity Impairments (LEI), A.M.A., *Guides* 511 (2008). A “good” result has a range of impairment of 21 -- 25 percent and a “fair” result has a range of 31 -- 43 percent.

⁹ It is also noteworthy that appellant’s physician was not provided an opportunity to respond to the DMA’s findings or asked to submit a rating under the 6th edition of the A.M.A., *Guides*.

ORDER

IT IS HEREBY ORDERED THAT the December 23, 2009 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further action consistent with this decision.

Issued: November 8, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board